

Staff Summary Report



To: Mayor & City Council
Through: City Manager

Agenda Item Number 39
Meeting Date 10/18/01

SUBJECT: Providing Enforcement Options for Park Rangers

PREPARED BY: Chris Anaradian, Rio Salado Manager (480-858-2204)

REVIEWED BY: Jan Schaefer, Economic Development Director (480-350-8036)

BRIEF: This is the **second** public hearing to amend Chapter 23 of the Tempe City Code giving park rangers the authority to cite violations currently classified as misdemeanors as civil violations.

COMMENTS: **TCC CH 23 PARKS & RECREATION (0503-23) ORDINANCE NO.2001.21**
Public hearings to amend Chapter 23 of the Tempe City Code to decriminalize current violations, thus giving park rangers the authority to cite for these activities in their role as code enforcement officials.

Document Name: (20011018mgrea01) Supporting Documents: Yes

SUMMARY: After consultation with the Police Department, City Attorney's Office, Rio Salado Advisory Commission, Parks and Recreation Board, Enhanced Services Commission, and Rio Salado Operations Team, staff is seeking implementation of the agreed upon modifications to City Ordinances under Section 23. The purpose of these changes is to give Park Rangers needed authority to take immediate action to maintain public peace, safety, and security by reclassifying violations currently classified as misdemeanors to civil violations. Park Rangers will continue to seek assistance from the City of Tempe Police Department as required and when needed.

Section 23 revisions have been prepared by the City Attorney's office, and were brought to the council for discussion at the Issue Review Session on September 13.

FISCAL NOTE: No significant fiscal impact. The City Court and Police Departments may encounter an increase in the processing of citations.

RECOMMENDATION: City staff recommends council adopt the developed ordinance revisions.

ORDINANCE NO. 2001.21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 23, TEMPE CITY CODE, RELATING TO PARKS AND RECREATION; BY AMENDING SECTIONS 23-36, 23-37, 23-45 AND 23-48; BY ADDING NEW SECTION 23-37.1; BY ADDING NEW ARTICLE III, DIVISION 4; AND BY REPEALING SECTIONS 23-58 AND 23-80.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 23-36 of the Tempe City Code is hereby amended to read as follows:

Sec. 23-36. Hours of operation.

(A) No person shall trespass upon or be upon the grounds, other than public sidewalks or streets located therein, of any city park, playground or golf course without the express written permission of the official designated by the community services director, between the hours of 10:00 p.m. and 6:00 a.m., unless otherwise posted; provided, however, with respect to any city park, playground or golf course that is equipped with either general area or athletic lighting which is functioning, the closing time shall be extended to 12:00 midnight.

(B) ANY PERSON OR PERSONS GUILTY OF VIOLATING ANY OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND PUNISHABLE AS SET FORTH IN § 1-7 OF THIS CODE.

Section 2. That Section 23-37 of the Tempe City Code is hereby amended to read as follows:

Sec. 23-37. Operation of motor vehicles, horses.

(A) No person shall drive or ride at any time any automobile, truck, motorcycle, motor scooter, motorized play vehicle or motorized skateboard as defined in §§ 19-1(b)(6) and (7) of this code, horse or other motor vehicle or animal upon the grounds of any city park, playground or golf course, except in public streets running through such premises or within designated parking areas located upon the premises, without the express written permission of the official designated by the community services director.

(1) A maximum speed of five (5) m.p.h. shall be in effect at all times, unless otherwise posted;

~~(2) Parking shall not be allowed except within specifically designated parking areas during park hours;~~

(23) Unlicensed motor vehicles or unlicensed operators shall not be allowed on any park property. With the exception of city vehicles or authorized maintenance vehicles, all motor vehicles shall remain on surfaced roadways at all times; and

(34)Horses shall be allowed only on designated bridle paths.

(B) ANY PERSON OR PERSONS GUILTY OF VIOLATING ANY OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND PUNISHABLE AS SET FORTH IN § 1-7 OF THIS CODE.

Section 3. That Chapter 23, Article III, Division 1 of the Tempe City Code is hereby amended by adding a new Section as follows:

SEC. 23-37.1. PARKING OF MOTOR VEHICLES.

NO PERSON SHALL PARK ANY AUTOMOBILE, TRUCK, MOTORCYCLE, MOTOR SCOOTER, MOTORIZED PLAY VEHICLE OR MOTORIZED SKATEBOARD AS DEFINED IN §§ 19-1(B)(6) AND (7) OF THIS CODE, OR OTHER MOTOR VEHICLE UPON THE GROUNDS OF ANY CITY PARK, PLAYGROUND OR GOLF COURSE, EXCEPT WITHIN SPECIFICALLY DESIGNATED PARKING AREAS DURING PARK HOURS.

Section 4. That Section 23-45 of the Tempe City Code is hereby amended to read as follows:

Sec. 23-45. Spirituous liquor in parks prohibited.

(a) The possession or consumption of spirituous liquors in city parks is prohibited, except that malt beverages are allowed for personal consumption with a permit issued by the community services department pursuant to § 23-56 of this code. The permit will be available to city residents only and be good for one day. The prohibition of spirituous liquors in any city park shall be conspicuously posted near all entrances to the park.

(b) This section does not apply to the possession or consumption of spirituous liquors in connection with any concessions authorized by the city at Rio Salado Park. Permits will not be issued for personal consumption of malt beverages on Rio Salado Town Lake.

(C) ANY PERSON OR PERSONS GUILTY OF VIOLATING ANY OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND PUNISHABLE AS SET FORTH IN § 1-7 OF THIS CODE.

Section 5. That Section 23-48 of the Tempe City Code is hereby amended to read as follows:

Sec. 23-48. Glass containers in public parks.

(a) It shall be unlawful for any person to have a glass beverage container in his possession in any public park under the jurisdiction of the city, unless specifically authorized by a permit issued pursuant to § 23-56 of this code.

(b) It shall be unlawful for any person to throw, toss or otherwise propel or either willfully and maliciously or carelessly and negligently break any glass object in a public park under the jurisdiction of the city.

(C) ANY PERSON OR PERSONS GUILTY OF VIOLATING ANY OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND PUNISHABLE AS SET FORTH IN § 1-7 OF THIS CODE.

Section 6. That Section 23-58 of the Tempe City Code is hereby repealed as follows:

~~Sec. 23-58. Penalty.~~

~~Any person or persons guilty of violating any of the provisions of this division shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.~~

Section 7. That Section 23-80 of the Tempe City Code is hereby repealed as follows:

~~Sec. 23-80. Penalty.~~

~~Any person or persons guilty of violating any of the provisions of this division shall be deemed guilty of a misdemeanor, punishable as set forth in § 1-7 of this code.~~

Section 8. That Chapter 23, Article III of the Tempe City Code is hereby amended by adding a new Division to read as follows:

DIVISION 4. ADMINISTRATION AND ENFORCEMENT

Sec. 23-81. Commencement of action, citation, contents.

(A) UNLESS OTHERWISE SPECIFIED, AN ACTION UNDER THIS ARTICLE SHALL BE COMMENCED BY DELIVERING A CITATION TO THE PERSON RESPONSIBLE FOR THE VIOLATION.

(b) The citation shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed pursuant to § 23-84 within fourteen (14) days after issuance of the citation. The form shall contain a schedule of fines and penalties that are imposed by this Article.

(C) THE CITATION SHALL BE SERVED BY DELIVERING A COPY TO THE DEFENDANT BY ANY OF THE FOLLOWING MEANS:

- (1) BY SERVICE UPON THE DEFENDANT BY THE DIRECTOR OR HIS DESIGNEE;
- (2) BY FIRST CLASS MAIL, POSTAGE PREPAID, ADDRESSED TO THE DEFENDANT AT THE LAST KNOWN ADDRESS. SERVICE BY MAIL IS DEEMED COMPLETE UPON DEPOSIT IN THE U.S. MAIL; OR
- (3) BY ANY OF THE METHODS DESCRIBED IN RULES 4, 4.1 OR 4.2, ARIZONA RULES OF CIVIL PROCEDURE.

(D) THE CITATION SHALL CONTAIN THE DATE AND LOCATION OF THE VIOLATION, REFERENCE TO THE TEMPE CITY CODE PROVISION OR ORDINANCE VIOLATED, AND NOTICE THAT WITHIN FOURTEEN (14) DAYS FROM THE DATE ON WHICH THE CITATION WAS ISSUED, THE FINE FOR THE

VIOLATION MUST BE PAID TO AND RECEIVED BY THE TEMPE MUNICIPAL COURT OR A REQUEST FOR A HEARING BE MADE TO AND RECEIVED BY THE TEMPE MUNICIPAL COURT.

(e) The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as established by this Article for the defendant's failure to appear.

Sec. 23-82. Appearance or payment by mail.

(a) The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in paragraph (b) below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged as set by this Article. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing of the matter.

(B) THE DEFENDANT MAY ADMIT THE ALLEGATION IN THE CITATION AND PAY THE FINE INDICATED BY MAILING THE CITATION TOGETHER WITH A CHECK FOR THE AMOUNT OF THE FINE TO AND MADE PAYABLE TO THE TEMPE MUNICIPAL COURT. APPEARANCE BY MAIL WILL BE DEEMED COMPLETE BY THE POSTMARKED DATE ON THE MAILING.

(C) ANY DEFENDANT WHO APPEARS IN THE TEMPE MUNICIPAL COURT AND DENIES THE ALLEGATIONS AS PROVIDED IN SUBSECTION (A) ABOVE SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION TO SERVICE OF THE CITATION, UNLESS SUCH OBJECTION IS AFFIRMATIVELY RAISED BY THE DEFENDANT AT THE TIME OF THE FIRST APPEARANCE IN RELATION TO THE CITATION.

Sec. 23-83. Default judgment.

If the defendant fails to appear as directed on the citation, the court, upon request of the director, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a penalty for the defendant's failure to appear as established by this Article. If a defendant fails to appear at a hearing, the court may enter judgment against the nonappearing defendant for the amount of the fine plus a penalty for failure to appear as established by this Article. No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation.

Sec. 23-84. Civil fines and penalties imposed.

(a) The civil fine/penalty for violating any provision of this article shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(b) In addition to the amount of the fine imposed under subsection (a) above, there is imposed a default penalty in the amount of fifty dollars (\$50) should the defendant fail to appear and answer for a violation of this Article within the time period stated on the citation or fails to appear at the time and place set by the court for a matter arising under this Article.

(c) The court may enforce collection of delinquent fines and fees as may be provided by law. Any

judgment for civil sanction pursuant to this code may be collected as any other civil judgment.

Sec. 23-85. Rules of procedure and appeal.

The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Tempe Municipal Court for civil citations issued pursuant to this Article except as modified or where inconsistent with the provisions of this Article or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.

Sec. 23-86. Each day separate violations.

Each day that a violation of this Article is permitted to continue or occur by the defendant shall constitute a separate offense subject to separate citation pursuant to the provisions of this Article.

Sec. 23-87. Habitual offender.

A person who commits a violation of this Article after having previously been found responsible by the court on three (3) separate occasions for committing a civil violation of this Article within a twenty-four (24) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be charged with a criminal misdemeanor pursuant to the general penalties provision of § 1-7. The Tempe city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court against habitual offenders who violate this section. In applying the twenty-four (24) month provision, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this day of _____, 2001.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney